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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/783,320	
	Filing Date	Feb 15, 2001	
	First Named Inventor	Walke, D. Wayne	
	Group Art Unit	1652	
	Examiner Name	D.M. Ramirez	
Total Number of Pages in This Submission	8	Attorney Docket Number	LEX-0137-USA

**ENCLOSURES (check all that apply)**

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<input checked="" type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
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<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): return postcard
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<input type="checkbox"/> Response to Missing Parts/Incomplete Application	Remarks	2 Binders
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Lance K. Ishimoto Reg. No. 41,866 Lexicon Genetics Incorporated
Signature	<i>Lance K. Ishimoto by Peter G. Self Reg No 41866</i>
Date	December 28, 2001

**CERTIFICATE OF MAILING**

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Signature	<i>Nancy Stacey</i>	Date	December 28, 2001

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Applicant(s): Walke, *et al.*

Group Art Unit: 1652

Application No.: 09/783,320

Examiner: D.M. Ramirez

Filed: February 15, 2001

Attorney Docket No.:  
LEX-0137-USA

Title: Novel Human Kinases and Polynucleotides  
Encoding the Same

10/a  
H.G.J  
3/13/02

**RESPONSE TO RESTRICTION AND ELECTION REQUIREMENTS AND  
AMENDMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

The Examiner is respectfully requested to accept the following response to the Restriction and Election Requirement mailed November 28, 2001 (Paper No. 8), to consider the remarks therein, and to enter the following amendment.

**I. Restriction Requirement**

Examiner Ramirez has determined that the original claims are directed to four separate and distinct inventions under 35 U.S.C. § 121, as follows:

Group I: Claims 1-3, said to be drawn to a polynucleotide according to SEQ ID NO:1 and a polynucleotide encoding the polypeptide of SEQ ID NO:2, classified in class 536, subclass 23.2;

Group II: Claim 4, said to be drawn to a polynucleotide encoding the polypeptide of SEQ ID NO:4, classified in class 536, subclass 23.2;

- Group III: Claim 5, said to be drawn to a polypeptide of SEQ ID NO:6, classified in class 536, subclass 23.2;
- Group IV: Claims 6-8, said to be drawn to a polynucleotide according to SEQ ID NO:45 and a polynucleotide encoding the polypeptide of SEQ ID NO:46, classified in class 536, subclass 23.2;
- Group V: Claim 9, said to be drawn to a polynucleotide encoding the polypeptide of SEQ ID NO:38, classified in class 536, subclass 23.2;
- Group VI: Claim 10, said to be drawn to a polynucleotide encoding the polypeptide of SEQ ID NO:30, classified in class 536, subclass 23.2.

## **II. Response to Restriction and Election Requirement**

In response to the Restriction Requirement mailed November 28, 2001 (Paper No. 8), Applicants cancel claims 1-3 (Group I invention), 6-10 (Group IV, V, VI inventions) without prejudice or disclaimer as being drawn to a non-elected invention. Regarding claims 4 and 5, Applicants respectfully request reconsideration of this requirement for restriction based on the fact that the nucleic acid sequences described in SEQ ID NOS: 1, 3 and 5 (and the amino acid sequences they encode, SEQ ID NOS: 2, 4 and 6) are all encoded by a common genetic locus and **are therefore not independent**. Accordingly, Applicants respectfully submit that Groups I, II and III (Claims 1-5) should have been combined into a single group of highly related sequences that share a common nexus of invention. Furthermore, the nucleic acid sequence described in elected SEQ ID NO: 3 contains the sequence described in SEQ ID NO:5 in its entirety. The difference between the two sequences being that SEQ ID NO:5, unlike SEQ ID NO: 3, does not contain 98 base pairs of sequence that are present in SEQ ID NO: 3. Therefore, Applicants respectfully submit that a search and examination of the claims directed at these two sequences (Claims 4 and Claim 5) would not be expected to place an undue burden on the Examiner. Applicants thus feel that at a minimum, consolidation of Group II. (Claim 4) and Group III. (Claim 5) is

warranted and deserves further reconsideration by the Examiner.

In the alternative, Applicants provisionally elect with traverse to prosecute the claim of Group II (Claim 4), classified in Class 536, subclass 23.2. Applicants further elect, pursuant to 35 U.S.C. § 121, the species of SEQ ID NOS: 3 for initial examination on the merits. Elected Claim 4 reads on the elected species. Applicants understand their species election is being made solely to expedite examination of the application, and that they are entitled to consideration of additional species upon allowance of a generic claim. Applicants reserve the right to refile claims to the non-elected inventions in one or more future applications retaining the priority date of the present case and the earlier cited priority applications.

### **III. Amendment and Request to Correct Inventorship**

In response to the Examiner's reminder that, upon election of Claims in response to the Restriction Requirement, inventorship must be amended in compliance with 37 C.F.R. § 1.48(b). Applicants respectfully request amendment of inventorship under 37 C.F.R. § 1.48(b) and 1.48(b)1 in order to remove the inventors of the non-elected claims since their invention is no longer being claimed in the present application as amended. The inventors ***that are requested to be removed*** as a result of the cancellation of the non-elected claims in this response to restriction requirement are Yi Hu and Boris Nepomnichy. The inventors of the remaining Claims are therefore, D. Wade Walke, C. Alexander Turner, Jr. and Brian Zambrowicz.

The PTO is authorized to charge the fee required under 37 C.F.R. § 1.17(i) for this Amendment and Request to Correct Inventorship in a non-provisional application under 37 C.F.R. § 1.48(b) to Deposit Account No. 50-0892. Although Applicants believe that no additional fees are due in connection with this response, the Commissioner is authorized to charge any underpayment or credit any overpayment required with this response to Deposit Account No. 50-0892.

### **IV. Status of the Claims**

Claims 1-3 and 6-10, representing the Group I, IV, V and VI inventions,

respectively, have been canceled without prejudice or disclaimer as drawn to non-elected inventions.

No claims within the Group II or III invention have been canceled.

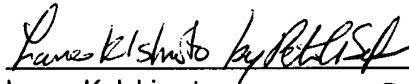
Claims 4 and 5 are presently pending in the case. For the convenience of the Examiner, a clean copy of the pending claims is attached hereto as **Exhibit A**. In compliance with 37 C.F.R. § 1.121(c)(1)(ii), a marked up copy of the original claims is attached hereto as **Exhibit B**.

**V. Conclusion**

The present document is a complete response to the Restriction and Species Election Requirement. Applicants believe that the claims of the instant application meet all of the conditions for patentability and are in condition for allowance. Accordingly, an early indication of the same is respectfully requested. Should the Examiner have any questions or comments a telephone call to the undersigned Applicants' representative is earnestly solicited.

Respectfully submitted,

12/28/01  
Date

  
Lance K. Ishimoto Reg. No. 41,866

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